

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.107 of 2000

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AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF
SENTENCE DATED 10.3.2000, PASSED BY THE XITH ADDITIONAL
SESSIONS JUDGE, SARAN IN SESSIONS TRIAL NO. 318 OF 1988.

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1. Ramji Singh, Son of Sat Narain Singh.
2. Rajendra Singh, son of Baidyanath Singh.
3. Kameshwar Singh, son of Rajendra Singh.
4. Satruhan Singh, son of Deonath Singh.
5. Suresh Singh, son of Satruhan Singh
All residents of Village Sarauja Bhagwanpur, P.S. Panapur (Mashrakh), District
Saran.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 125 of 2000

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1. Satya Narayan Singh, son of Hardeo Singh.
2. Daroga Singh, son of Hardeo Singh.
3. Mahesh Singh, son of Satya Narayan Singh.
4. Jitendra Singh, son of Raj Ballabh Singh.
5. Lakhan Singh, son of Baijnath Singh.
6. Raj Ballabh Singh, son of Baijnath Singh.
7. Arjun Singh, son of Shatrughan Singh.
All residents of village Sarauja Bhagwanpur, P.S. Panapur (Mashrakh), District
Saran.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

(In both the appeals)

For the Appellants : Mr. Narendra Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. SHEEMA ALI KHAN

ORAL JUDGMENT

Date: 14-08-2012

S.A. Khan, J.

These two appeals are directed against the judgment of
conviction and sentence dated 10.3.2000, passed by the XIth

Additional Sessions Judge, Saran in Sessions Trial No. 318 of 1988.

The appellants of Cr. Appeal 107 of 2000 (S.J.) have been convicted and awarded sentence in the following manner:-

Ramji Singh has been convicted under Sections 307, 324, 148 and 323 of the Indian Penal Code to undergo R.I. for 7 years, 1 year, 1 year and 6 months respectively. Rajendra Singh has been convicted under Sections 307, 324, and 148 of the Indian Penal Code to undergo R.I. for 7 years, 1 year and 1 year respectively. Suresh Singh has been convicted under Sections 307 and 148 of the Indian Penal Code to undergo R.I. for 7 years and 1 year respectively. Kameshwar Singh and Satruhan Singh have been convicted under Sections 307, 324 and 148 of the Indian Penal Code to undergo R.I. for 7 years, 1 year and 1 year respectively. All sentences were ordered to run concurrently.

The appellants of Cr. Appeal 125 of 2000 (S.J.) have been convicted and awarded sentence in the following manner:-

Jitendra Singh, Satya Narayan Singh, Daroga Singh and Mahesh Singh have been convicted under Section 148 of the Indian Penal Code, whereas Lakhan Singh, Raj Ballabh Singh and Arjun Singh have been convicted under Sections 323 and 148 of the Indian Penal Code. All the appellants have been given the benefit of Section 360 of the Code of Criminal Procedure and have been released on

furnishing bonds of Rs. 5,000/- each to maintain good behaviour for a period of three years.

2. The prosecution case is that on 23.11.1986 at about 10 A.M. the informant Kailash Singh along with Ram Narayan Singh and Shyam Narayan Singh were going to cut paddy crops standing on his field. As soon as they reached their field, the accused came there variously armed with Bhalas, Farsas and Lathis. It is alleged that Satrugan Singh assaulted Kailash Singh, the informant on the hand with a Farsa. Ramji Singh assaulted him on the head with a Farsa. Lakhan Singh assaulted the informant on the shoulder by blunt portion of Bhala. Rajendra Singh assaulted Shyam Narayan Singh with a Bhala in the abdomen. Suresh Singh fired on Shyam Narayan Singh who fell on the ground due to the impact of the shot fired. After which Rajendra Singh assaulted Shyam Narayan Singh on the head with a Bhala, whereas, Raj Ballabh Singh assaulted Ram Narayan Singh on the wrist and shoulder. On an alarm being raised the nephew of the informant Bali Singh and his brother Chandrika Singh rushed there whereupon, Ramji Singh assaulted Chandrika Singh on the head with blunt portion of Farsa and Kameshwar Singh assaulted Bali Singh with a Bhala on the back. Arjun Singh assaulted Bali Singh with brick on the chest. In this manner several persons were injured. The witnesses named in the First Information Report are Nawab Kuer,

Nagendra Singh and Ramchandra Singh. The motive for the occurrence is a land dispute with respect to Khesra Nos. 643 and 644.

3. The prosecution and the defence have filed several documents to show that they are the bona fide owners of the land in question. The prosecution has produced two sale deeds one in favour of Ram Narayan and other in favour of Kailash Singh dated 15.3.1972 which have been marked as Ext. 1 and 1/1. Rent receipts have been produced which are in favour of Kailash Singh which has been marked as Ext. 1/2. Rent receipts of Shyam Narayan Singh dated 22.1.1998 have been marked as Ext. 5 whereas rent receipts of Ram Narayan Singh dated 22.1.1998 have been marked as Ext. 5/1, rent receipts dated 22.1.1998 in favour of Kailash Singh have been marked as Ext. 5/2. The injury reports have been marked as Exts. 6 to 6/6.


4. On behalf of defence Ext. A which is the First Information Report of Mashrakh (Panapur) P.S. Case No. 196 of 1986 has been produced to show that there is a counter case in which Kailash Singh, Mahesh Singh, Satrugan Singh and Satya Narayan Singh were injured. Their injury reports are marked as Ext. C/1 to C/3. Ext. D series are 30 rent receipts produced on behalf of the defence. Certified copy of sale-deed executed by Dwarika Singh in favour of Devi Singh and Durga Singh are marked as Ext. E. Certified copy of deed of delivery of possession dated 30.1.1936 has been

marked as Ext. F. The certified copy of power of attorney has also been produced which has been marked as Ext. K along with several other documents which are very old and are of the year 1903 to 1920 have been produced by the defence to show their claim over the property in question.


5. Altogether 10 witnesses have been examined in this case out of which P.W. 9 is a formal witness and P.W. 3 has turned hostile. The rest of the witnesses have given evidence with regard to the occurrence. P.W. 10 is the doctor who has examined the injured persons whereas P.W. 8 is the Investigating Officer of this case.

6. The only question in this appeal is whether the evidence of the witnesses leads to the conclusion that a case is made out under Section 307 of the Indian Penal Code.

7. The background of the case which would be apparent after perusal of the documentary evidence is that the accused persons as well as the informant and his brothers are all claiming possession of Plot No. 644 and 645. The place of occurrence was the aforesaid plot of land which was being harvested by Shyam Narayan Singh, Ram Narayan Singh and Kailash Singh along with other family members. The genealogical table would indicate that both come from the common ancestors Raj Kumar Singh. Raj Kumar Singh had two sons Lakhan Singh and Paltan Singh. The family of Lakhan Singh are the




appellants in this case whereas the family of Paltan Singh are the injured. The whole dispute arises because it is said that Dharichhan Singh (Harihar Singh) had supposedly executed a power of attorney in favour of Dwarika Singh and on the basis of this power of attorney he claims to have got possession of the share of Hari Charan Singh. The Trial Court has tried to assess the documents of both the appellants and the informant party and on the basis of the said assessment has come to the conclusion that the accused persons have failed to prove their rightful possession over the place of occurrence i.e. the field. This Court would not go so far as to assess the documents and the question of possession in this case. An occurrence usually happens when there is a dispute regarding the title and possession. In this case there is a dispute regarding both aspects of the matter. Either party may claim that they had a right in the property and also have possession on the land in question. The claim may or may not be bona fide. A proceeding under Section 145 of the Code of Criminal Procedure is admittedly pending between the parties and the question of possession would be decided in that case. It is also not proper to decide the possession of one or the other party as oral evidence in a criminal case is led only by one side and other side does not have an opportunity to explain or rebut the evidence led by the prosecution side. In this case the prosecution is claiming possession over the place




of occurrence by virtue of the sale deed dated 15.3.1972 executed by one Shital Singh in favour of Shyam Narayan Singh. The Trial Court has come to the conclusion that since the sale deed has not been challenged in 28 years, therefore, the appellants do not have a right to challenge the said sale deed. Again this Court would like to reserve its comments regarding this aspect of the matter which ought not to be put at rest in a criminal case. The question which has to be decided regarding possession depends upon the findings of the Investigating Officer. Ideally this case ought to have been tried along side with Mashrakh P.S. Case No. 29 of 1996 which is the counter case filed by the appellants against the informant and his brothers Ram Narayan Singh and Shyam Narayan Singh.

8. The Investigating Officer in this case has not given a definite opinion regarding the possession of either of the parties. He has been examined as P.W. 8 in this case. He has given the boundary of the place of occurrence. He has found that there was signs of 'Marpit' in the field as the field was trampled and blood was also found on the said field. Infact the Investigating Officer has stated at paragraph 7 that the land belongs to Lakhan Singh. Lakhan Singh is the forefather of the appellants. Therefore, the dispute seems to be bona fide and will be decided in due course by the competent Court.

9. The evidence of P.W. 1 Nagendra Singh indicates that he




accepts that there was an occurrence in which Kailash Singh, Shyam Narayan Singh and Bali Singh were assaulted. He came to the place of occurrence when he heard the commotion in the field. He has categorically stated at paragraph 7 that both the parties were assaulting each other. P.W. 2 Chandrika Singh is the nephew of Kailash Singh, the informant. According to his evidence he was given a Farsa blow by Satrugan Singh, Satyna Narayan Singh and Mahesh Singh. He further alleges that Arjun assaulted him with a lathi. He also supports the prosecution version by stating that Satrugan Singh gave a Farsa blow to Ram Narayan Singh. Ramji Singh inflicted an injury on the head and Lakhan Singh inflicted an injury on the hand of Kailash Singh by means of a Bhala. He also supports the assault on Shyam Narayan Singh and Bali Singh. According to this witness, the land in question belongs to Kailash Singh. He accepts that Satya Narayan had filed a case which has already been disposed of. Therefore, this witness accepts that there was a dispute between both the parties with respect to the land in question. P.W. 4 Shyam Narayan Singh is the brother of the informant. According to him the land in question had been purchased by the brother. He goes in some detail to explain the cause of the dispute one of them being that there was a deed of gift executed by Paltan Singh which has come to be doubted by the parties. This witness claims that they were in possession of the land and it was




the appellants who had assaulted the informant and his family members. The evidence of P.W. 5 Ram Narayan Singh is similar to the evidence of P.W. 4. He supports the prosecution case and claims that Kailash Singh was in possession of the land by virtue of a sale deed. He supports the fact that there was some dispute between the two Pattidars regarding the land in question but nevertheless he claims that he along with his brother were in possession of the land. P.W. 6 Bali Ram Singh also an injured in this case is the son of Shyam Narayan Singh. According to him Kameshwar Singh gave him a Bhala blow, whereas Arjun Singh assaulted him with bricks on his chest. He accepts the fact that a counter case has been filed in which Kailash, his father and uncle are accused. P.W. 7 Kailash Singh has given details how each of the accused has assaulted him, his brothers and family members. He claims that Chandrika Singh had intervened in the occurrence was also assaulted by the appellants. The main allegations of assault are against Ramji Singh, Satendra Singh, Kameshwar Singh and Satrugan Singh. There are some allegations that Arjun, Lakhan and Raj Ballabh also inflicted Lathi blows.

10. The doctor who had examined the injuries supports the injuries as described by the witnesses in their deposition. The counsel for the appellants has not been able to dislodge the manner of occurrence as described by the informant and the witnesses and



discredit the evidence of the doctor. The question as to whether there was an intention on the part of the appellants to cause injuries which were fatal in nature is an issue which has to be decided in this case. This Court finds that it is admitted that both the parties assaulted each other, that they were Pattidars, both have filed numerous documents to show not only their title but also their possession, but none of the witnesses have stated that the occurrence had taken place in a preplanned manner. It is also admitted by Kailash Singh, the informant that they have a piece of land just adjacent to the disputed plot of land over which there is no dispute between the parties i.e. Plot No. 643. Therefore, it would appear that this is not a case of a preplanned assault rather the occurrence took place because the appellants rightly or wrongly objected to the informant and his family harvesting rice from Plot Nos. 644 and 645. Thus, this Court concludes that the offence under Section 307 of the Indian Penal Code is not made out in this case. The appellants of Cr. Appeal 125/2000 (S.J.) have been let off by giving them the benefit of Section 360 of the Code of Criminal Procedure. The period for which they had to maintain good behaviour has already lapsed in 1989. Thus, nothing more is required to be said regarding their case. Counsel for the appellants has submitted that the occurrence has taken place on 23.11.1986 and more than quarter of century has lapsed since the date



of occurrence and as such this Court ought not to send the appellants in custody. They have been convicted under Sections 324 and 148 of the Indian Penal Code to undergo R.I. for one year and under Section 323 of the Indian Penal Code to undergo R.I. for six months. Considering that the appellants have all remained in custody for at least 20 days, I alter the sentence by holding that the period undergone would suffice to meet the ends of justice. The appellants are further directed to deposit a compensation of Rs. 1,000/- each to be paid to the injured i.e. Chandrika Singh, Bali Singh, Ram Narayan Singh, Kailash Singh and Shyam Narayan Singh in equal proportion failure to pay fine will entail Simple Imprisonment for two months. The fine should be deposited in the Court below within a period of four months of valid service of notice. The informant may be noticed to collect the fine amount on behalf of all the injured persons mentioned aforesaid. Cr. Appeal 107 of 2000 (S.J.) is dismissed with alteration in sentence whereas the punishment imposed on the appellants of Cr. Appeal 125 of 2000 (S.J.) is maintained although the period as stated above has already lapsed.

11. The appellants are permitted to utilize the web copy, so that the Court below may accept the compensation amount. The Court may issue notice to the informant/injured so that he/they may receive the compensation amount. The appellants will be discharged

of the liabilities of their bail bonds after they have paid the compensation.

Sanjay/-

(Sheema Ali Khan, J.)